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Paper No. 8

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In re Application of  
Hetzner, Keunecke, Schlaaff & Gelfer  
Application No.: 09/911,811  
Filed: July 24, 2001  
Attorney Docket No.: P01,0236  
For: ARRANGEMENT AND METHOD FOR  
DATA FOLLOW-UP WARMUP CYCLES OF  
INK JET PRINT HEADS

COPY MAILED

JUL 23 2002

OFFICE OF PETITIONS

DECISION REFUSING STATUS  
UNDER 37 CFR 1.47(a)

This is a decision on the petition under 37 CFR 1.47(a), filed March 7, 2002 (certificate of mailing date February 27, 2002).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. Any response should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)" and may include an oath or declaration executed by the inventor. **Failure to respond will result in abandonment of the application.**

The above-identified application was filed on July 24, 2001 without an executed oath or declaration. Accordingly, on September 4, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

In response, on March 7, 2002 (certificate of mailing date February 27, 2002), a petition for a four month extension of time and required fee, a declaration executed by 3 of 4 joint inventors, the surcharge, the petition fee, and the instant petition were filed. A declaration of facts of Wolfgang Thiel accompanied the petition. Mr. Thiel explains that non-signing joint inventor George Gelfer received numerous copies of the declaration and assignment for the above-identified application, but did not respond to the request that he sign the declaration for the patent application.

A grantable petition under 37 CFR 1.47(a) requires

- (1) a petition including proof of the pertinent facts establishing that the joint inventor(s) refuses to join, or cannot be found or reached after diligent effort,
- (2) a proper oath or Declaration executed by the available joint inventor(s),
- (3) the fee of \$130 as specified in 37 CFR § 1.17(h), and
- (4) the last known address of the omitted inventor(s).

This petition lacks item (1) above.

As to item (1), Applicants have failed to establish that the inventor has refused to sign the

declaration. The proof of the pertinent events should be made by a statement of someone with first hand knowledge of the events. The Office requires that the non-signing inventor be provided with a complete copy of the application as filed. This includes the specification with claims, drawings, if any, and a declaration. See MPEP 409.03(d). Mr. Thiel's statement of facts does not establish that a complete copy of the application was mailed to Mr. Gelfer's last known address.

Mr. Gelfer must have the complete application in his possession in order to make an informed decision as to whether he joins in its filing. Mr. Gelfer cannot make the required statements in the declaration without having the application in his possession -- ("I have reviewed and understand..." etc.). When petitioners can show that Mr. Hamilton was mailed or received the complete application and that he either refused to sign the declaration or would not respond to the request that he sign the declaration, petitioners will have satisfied this requirement.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Commissioner for Patents  
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By facsimile:             (703) 308-6916  
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Telephone inquiries should be directed to the undersigned at (703) 308-6712.

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